UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 13-11460-RWZ

BRIGHAM AND WOMEN'S HOSPITAL, INC. and INVESTORS BIO-TECH, L.P.

V.

PERRIGO COMPANY and L. PERRIGO COMPANY

QUESTIONS TO THE JURY ON SPECIAL VERDICT

December 14, 2016

A. INFRINGEMENT - BWH and IBT have the burden of proof by a preponderance of the evidence

Direct Infringement

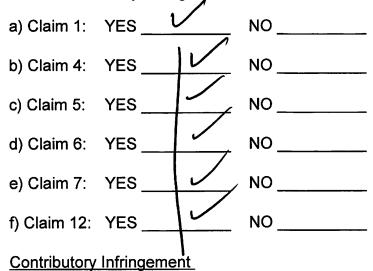
Question No. 1: Does defendant Perrigo, by manufacturing and selling Famotidine Complete, directly infringe claims 1, 4, 5, 6, 7, and/or 12 of the '137 patent?

a) Claim 1:	YES	NO
b) Claim 4:	YES	NO
c) Claim 5:	YES	NO
d) Claim 6:	YES	NO
e) Claim 7:	YES	NO
f) Claim 12:	YES	NO

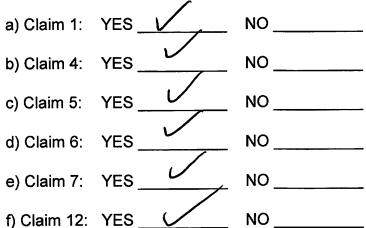
Please answer next Questions 2 and 3.

Inducement to Infringe

Question No. 2: Did defendant Perrigo induce infringement by manufacturing and selling Famotidine Complete with the knowledge and intent that a third party who uses its product would thereby infringe claims 1, 4, 5, 6, 7, and/or 12?



Question No. 3: Did defendant Perrigo contributorily infringe by manufacturing and selling Famotidine Complete with the knowledge that its product was made for use by a third party which use would infringe claims 1, 4, 5, 6, 7, and/or 12?



If you answered YES as to any parts of Questions 1, 2, or 3, please answer next Question 4.

If you found no claims to be infringed by answering NO to all parts of Questions 1, 2, and 3, please go directly to Question 5.

Willful Infringement

f) Claim 12: YES

Question No. 4: Did defendant Perrigo willfully infringe claims 1, 4, 5, 6, 7, and/or 12 of the '137 patent?

NO

- a) Claim 1: YES _____ NO ____
- b) Claim 4: YES _____ NO ____
- c) Claim 5: YES _____ NO ____
- d) Claim 6: YES _____ NO ____
- e) Claim 7: YES _____ NO ____

B. VALIDITY

<u>Priority Date</u> - BWH and IBT have the burden of proof by a preponderance of the evidence.

Question No. 5: The effective priority date of the '137 patent is

- a) March 1990 _____
- **b)** May 6, 1992 _____

Perrigo has the burden of proof by clear and convincing evidence on Questions Nos. 6 and 7.

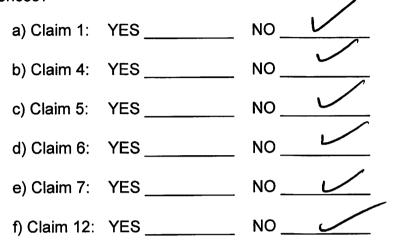
Anticipation

Question No. 6: Are one or more of the asserted claims of the '137 patent invalid because the claimed method of use was anticipated by a single prior art publication or reference?

- a) Claim 1: YES _____ NO ____
- b) Claim 4: YES _____ NO ___
- c) Claim 5: YES _____ NO ____
- d) Claim 6: YES NO NO
- e) Claim 7: YES _____ NO ____
- f) Claim 12: YES _____ NO ____

Obviousness

Question No. 7: Are one or more of the asserted claims of the '137 patent invalid because the claimed method of use was rendered obvious by prior art publications or references?



If you found infringement of one or more claims and also that the those claims are valid, please answer the next question concerning damages. That is, if you answered YES to one or more parts of Questions 1, 2, or 3, and NO to each corresponding part of Questions 6 and 7, please answer next the corresponding questions concerning damages.

If you found either no claims to be infringed by answering NO to all parts of Questions 1, 2, and 3, or if you found all infringed claims to be invalid by answering YES to all corresponding parts of Questions 6 and 7, please return your verdict to the court.

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Reasonably Royalty

INCASOIN	ably royalty	
Question No.	8: What is the reasonably royalty for infringement of any valid claim(s)?	
(a) R	Rate per tablet: \$	
	fultiplied by: Total number of tablets sold	
Т	otal reasonable royalty: \$ 10, 210, 071. 700	
	<u>OR</u>	
(b) R	Rate of royalty:%	
M	fultiplied by: Net sales	
Т	otal reasonable royalty: \$	
<u>Pre-judo</u>	gment Interest	
Question No.	9:	
	Should pre-judgment interest be awarded on the amount determined in Question 8?	
YES	NO	
If the answer to	o Question 9(a) is YES, please answer Question 9(b).	
If the answer to	o Question 9(a) is NO, please return your verdict to the court.	
(b) T	he rate of pre-judgment interest is%	

D. LACHE	D. <u>LACHES</u> - Peringo has the builden of proof by a preponderance of the evidence				
Question	No. 10:				
(a)	infringement	When did plaintiffs BWH or IBT know, or should have known, of its infringement claim against defendant Perrigo?			
DAT	re <u>Aug. 11</u> ,	2008			
(b)	Did plaintiffs	BWH or IBT unre	easonably delay i	in filing this lawsuit in 2013?	
YES	S	NO_X	_		
If you answ (d).	vered yes to Qu	uestion 10(b), plea	ase answer next	Question Nos. 10(c) and	
If you ansu	wered no to Que	estion 10(b), plea	se return your ve	rdict to the Court.	
(c)	Did defenda	nt Perrigo suffer ı	material harm as	a result?	
YES	3	NO	_		
(d)	Did plaintiffs	BWH or IBT file	this lawsuit in 20	13 without justification?	
YES	S	NO	_		
			,		
	2/14/16		Kelly	bruarten	
	DATE		FORE	EPERSON	